

## A Real Estate and Land Use Law Update

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### Domestic Partnership Expansion Act: Legislative Update

Washington's Domestic Partnership Registration Act has undergone a number of important changes that dramatically expand the rights and responsibilities of registered domestic partners in Washington.

The state first adopted a domestic partnership registration for same-sex couples and unmarried heterosexual couples where at least one of the partners is 62 years of age or older. The Domestic Partnership Registration Act provided registered domestic partners with limited but enhanced rights under state law, including hospital visitation rights and the ability to make health care decisions.

The [Domestic Partnership Expansion Act of 2008](#) (“Expansion Act”) adds new sections and amends approximately 172 different non-domestic relations statutes. It takes effect on June 12, 2008. While the law does not affect couples who are not registered with the state, regardless of their living arrangements or sharing of assets, Washington will recognize a same-sex legal union that was validly formed in another jurisdiction, as long as it is the substantial equivalent of a Washington registered domestic partnership. The state will not recognize a same-sex marriage.

The Expansion Act will have a significant effect on many areas of state law, including creation of community property between registered domestic partners. Registered domestic partners will have the same community property rights that only married couples enjoyed. As one important result, the purchase, sale, conveyance or encumbrance of real property by a partner in a registered domestic partnership will now need the signatures of both registered domestic partners.

Currently, only assets acquired by a husband and wife after marriage are presumed to be community property and then only if not acquired through gift, bequest, devise, descent or inheritance. The Expansion Act applies the same rules to members of a registered domestic partnership, except that the presumption of the community nature of property for any specific registered domestic partnership applies only to property acquired after the *later of* either the date of initial registration of the registered domestic partnership or the effective date of the Expansion Act. As with traditional marriage, the presumption of community property can be waived or modified with a prenuptial or postnuptial agreement (referred to as a pre- or post-registration agreement in the domestic partnership context).

The Expansion Act will also change the excise tax law so that transfers of real property between registered domestic partners — where there is no change in the beneficial ownership — will no longer be treated as a “sale” and are, therefore, exempt from paying state excise taxes. Although these transfers are exempt from state excise taxes, transfers between domestic partners may still give rise to federal gift or income tax consequences.

Members of a currently registered domestic partnership who do not want to be subject to all of the additional rights and responsibilities of the Expansion Act must terminate their registration prior to the June 12, 2008, effective date or, to the extent such rights and obligations may be amended by contract, enter into a post-registration agreement. Currently, registered domestic partners can legally terminate their relationship by filing a notice of termination of the registered domestic partnership and paying a \$50 filing fee. Beginning June 12, 2008, registered domestic partners who want to terminate their relationship will likely need to file a petition for dissolution and go through a process much more like traditional divorce, except under limited circumstances.

As noted above, the community property and issues are only two of the changes that will be implemented as a result of the Expansion Act. The Expansion Act is far reaching and will affect other areas of the law, including but not limited to inheritance, child custody, maintenance orders and temporary parenting plans.

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